

General Delivery Terms and Conditions

1. Contractual basis

The basis for the obligations and deliveries of the Seller are listed in the following order of priority: The order confirmation with the Seller's Delivery Terms and Conditions, the Purchasing Agreement and the order.

Any deviation from the order confirmation and the Seller's Delivery Terms and Conditions shall only then be binding if it has been agreed in writing.

The Buyer's Purchasing Terms and Conditions shall only then be valid if they have been expressly agreed as being binding and in writing.

The agreement shall only then be considered as having been concluded when the Seller confirms the order in writing.

Weights, dimensions, charts, brochures, price lists, etc. are considered to be non-binding. Technical documents serve merely to reproduce the functional principle. Deviations in the details are possible.

All documents shall remain the Seller's intellectual property and may neither be copied nor reproduced nor disclosed to third parties in any manner nor used in order to produce a work product or components.

Technical documents for bids which do not result in the conclusion of an agreement must be promptly returned in full and no copies may be made of them.

The Buyer must notify the Seller, by no later than when the order is made, in writing about all directives and norms which refer to the implementation of the delivery and the services/deliveries, operations as well as safety issues and prevention of illness and accident.

2. Delivery

The Seller's deliveries and services are definitively listed on the order confirmation. The Seller shall be authorised to undertake changes which result in improvements insofar as they do not cause a price increase.

In all cases, use and risk shall be transferred to the Seller by no later than the date when the work product is accepted or if such an acceptance has not been made, by no later than when the readiness for shipment is sent to the Buyer.

If the shipment is delayed or becomes impossible owing to reasons for which the Seller is not responsible, then the delivery shall be warehoused at the Buyer's expense and risk.

Transport shall be made at the Buyer's expense and risk.

The Buyer shall be obliged to take out insurance against damages of any kind.

If mounting is required or requested for a machine, then this shall be carried out independently and separately of the Purchasing Agreement in accordance with the Seller's General Mounting Terms and Conditions and separately billed.

3. Deadlines/timeframes

The delivery timeframe shall begin to run as soon as the payment to be rendered has been paid and all security has been provided, all governmental formalities as well as importing and customs permits have been obtained as well as the technical points have been clarified.

The contractually agreed delivery timeframes shall be adhered to insofar as this is possible.

As soon as delays are discovered, they shall be promptly reported.

The delivery timeframe shall be appropriately extended:

– If the Seller does not promptly receive the information that is required or has been requested for the implementation of the order or if the Buyer subsequently changes it.

– If hindrances arise which lie outside the Seller's sphere of control regardless of whether they affect the Seller, the Buyer or a third party. For example, such hindrances are epidemics, mobilisations, terror attacks, wars, civil unrest, major operational disruptions, accidents, labour conflicts, late or flawed deliveries of the required raw materials, semi-finished or finished products, exclusion of important work pieces, governmental measures and natural events.

– If third parties are delayed in the rendering of the services which they are required to render and in the fulfilment of their contractual obligations.

In the event that there are delivery delays, then the Buyer shall still be bound to its contractual obligations. It shall neither be entitled to a right of rescission nor to damage compensation.

4. Price and conditions

The price is understood to be ex works excluding VAT and other governmental levies such as, for example, taxes and customs duties, etc.

All ancillary costs such as, for example, the costs for supplying work, packaging, delivery, insurance, reservation of ownership registrations, mounting and commissioning, training and conformance to local and the Buyer's company directives/policies shall be assumed by the Buyer.

In principle, packaging shall be billed at actual cost and shall not be taken back.

If the event that costs increase for materials, wages or other price-forming factors of any kind (including during delivery delays for which there is no fault), then the prices shall be billed that were valid at the point in time that the readiness for shipment was made.

50% of the purchase price shall become payable within 14 days after the date that the order is confirmed, 40% before the outgoing delivery is made. The remaining 10% must be paid after factory acceptance test at the Seller's, but nonetheless by no later than 30 days after delivery is made.

The payment timeframes must also be adhered to if transport, delivery, mounting or commissioning of the delivery is delayed or made impossible owing to reasons for which the Seller is not responsible.

Rectification work and pending notifications of defects shall not release the Buyer from its payment obligation from the agreement.

The Buyer must make the payments at the Seller's commercial domicile.

If the payment is not rendered in the contractually agreed currency, then the Seller shall be entitled to assert a claim for the Swiss franc currency rate at the point in time that the order is confirmed.

If the Buyer is delayed in making a payment, then the Seller shall be entitled-even without issuing a warning letter-to charge default interest of 0.8% per month from the point in time that the outstanding payment comes due.

If the Buyer enters into default or it must seriously be feared owing to sets of circumstances which arose after the contractual agreement was concluded that the Buyer is not able to render the payment in full or in a timely manner, then the Seller may suspend the fulfilment of its contractual obligations until the outstanding payment claims are settled or sufficient security has been provided.

If the payment obligation is not fulfilled even after a written warning letter has been issued, then all claims from the warranty and any notifications of defects shall be forfeited.

If the Buyer fails to fulfil its payment obligation within 20 days after the written warning letter has been sent, then all of the Seller's outstanding payment claims from this agreement shall become payable.

Furthermore, the Seller shall have the right to choose either to continue to be bound by the agreement or to withdraw from it. In any case, the Seller must be compensated as follows:

1. If the ownership to the delivery goods has not yet been transferred to the Buyer:

- 100% of the purchase price if the delivery goods have been newly developed for the Buyer or custom-made or specially ordered or equipped for the Buyer.

- 25% of the agreed sales price for all other types of deliveries.

2. If the purchased goods are already in the Buyer's possession and the Seller has availed itself of its right of rescission, then the Buyer must immediately send back the goods to the Seller at the Buyer's own expense. In addition, it must pay the Seller

- 35% of the purchase price
- As well as 2% of the purchase price for each month that the Buyer has the goods in its possession
- Any more extensive compensation for any possible use of the delivery.

3. In all cases, the right is reserved to assert any more extensive damage compensation claims.

If, despite a written warning letter having been issued, the Buyer does not accept the delivery within an appropriate timeframe, then the Seller shall be entitled to withdraw from the agreement and to demand damage compensation which shall be calculated in accordance with 4.4.

If, despite the Buyer finding itself in delivery acceptance default, the Seller continues to insist upon the fulfilment of the agreement and warehouses the purchased goods owing to the delay in making delivery acceptance, then the Buyer shall be entitled to charge a warehousing fee of 0.25% of the sales price for each day after the delivery is made available as well as assert any additional claims for damages against the Buyer.

The Buyer must assume any costs incurred owing to unjustified notifications of defects.

In any case, the agreed payments must be made when they come due. The Buyer is permitted to offset with its own claims only in the event that a corresponding written agreement has been concluded.

5. Reservation of ownership

The Buyer hereby expressly declares itself to be in agreement that the Seller shall remain the owner of the purchased goods until payment in full has been rendered.

The Seller may have the reservation of ownership to the purchased goods registered with the corresponding register for the reservation of ownership-even without the Buyer's cooperation.

The goods may neither be pledged nor encumbered nor sold until payment in full is made.

The Buyer shall be obliged to insure the goods against fire, natural hazards, etc. and to maintain and service them with all due care in accordance with the applicable directives.

In the event of a change of domicile or location for the delivery, the Buyer shall be obliged to promptly notify the Seller of this.

6. Acceptance

Insofar as it is customary, the delivery shall be inspected by the Seller before shipment is made. The Buyer must provide the required materials for this. If the Buyer demands more extensive inspections, then they must be agreed in writing and the costs for them shall be charged to the Buyer.

The machine shall be accepted by the Buyer at the factory and a countersigned log shall be prepared. The machine shall be considered to have been accepted if it contains no defects which prevent functionality. The machine shall likewise be considered to have been accepted in the event that the Buyer waives its right to make acceptance.

The Buyer shall be obliged to inspect the purchased goods immediately upon receipt and report any defects within one week's time. If it fails to do this, then the deliveries and services shall be considered to have been approved.

The Seller must eliminate any defects as quickly as possible which are disclosed to it. In all cases, it must be granted the opportunity to make a rectification. Any more extensive claim of the Buyer owing to a defective delivery, particularly owing to damage compensation and the dissolution of the agreement, shall be excluded.

7. Warranty

While properly handling and using materials which are suitable for contractual processing based upon state-of-the-art technology, the Seller shall provide a warranty for the flawless functioning of its machines based upon the guaranteed quality features.

For new machines and daily operational times of 8 hours, the Buyer's warranty claim shall be for a period of 12 months after notification of the readiness for delivery has been made. If the operational time is exceeded, then the warranty period shall be proportionally reduced based upon the amount of operational time that has been exceeded.

If responsibility for the mounting work is also assumed, then the warranty period shall begin to run when the mounting work is completed.

In any case, the warranty period shall end by no later than 18 months after the notification of readiness for shipment is made.

The warranty timeframe for replacement parts shall be 3 months. Wear-and-tear parts are excluded from the warranty.

The Seller shall be obliged, in accordance with the warranty-related provisions, to eliminate any major defects restricting functionality which the Buyer complains about that are based upon a flaw in design or implementation insofar as the purchased goods were used contractually. The replaced parts shall become the Seller's property.

The Seller must assume the costs that are incurred for rectification work carried out at its factory. If the rectification work cannot be carried out at the Seller's factory, then the related additional costs shall be assumed by the Buyer.

The Buyer shall not be entitled to any additional claims. In particular, it shall be considered as having been expressly agreed that the Seller must pay the Buyer no damage compensation for personal injury, for damage to goods that are not the contractual goods, for third-party payment claims, costs of any kind or lost profits.

The following are excluded from the warranty: Damage owing to natural wear-and-tear, flawed maintenance, failure to adhere to operational directives, improper use, excessive workloads, unsuitable operational resources, chemical or electrolytic influences, flawed building or mounting work that has not been carried out by the Seller as well as the result of other reasons for which the Seller is not responsible (such as, for example, the use of process-related know-how of the Buyer, changes in the materials to be processed, etc.).

All responsibility is excluded for tools or other parts of machines which the Seller itself has not produced.

The warranty shall lapse if the Buyer or a third party has made changes and repairs to the delivery without the Seller's written approval; furthermore, if the Buyer has not promptly undertaken suitable measures so that any damages do not become larger and the Seller cannot eliminate the defect.

For third-party deliveries, the Seller shall provide a warranty merely within the parameters of the warranty obligations of the sub-supplier.

8. Severability clause

In the event that individual provisions of these General Delivery Terms and Conditions should be ineffective, then the validity of the remaining provisions shall not be affected.

9. Legal venue and applicable law

The exclusive legal venue shall be the Seller's commercial residence (Wasen, Trachselwald, BE).

The legal relationship shall be subject to Swiss law subject to the exclusion of the UN-Kaufrecht [United Nations Convention on Contracts for the International Sale of Goods] (WKR).